

19. ITEM NO.	20. SCHEDULE OF SUPPLIES/SERVICES	21. QUANTITY	22. UNIT	23. UNIT PRICE	24. AMOUNT
	RFP: 78397 State: IL LDC: People's Gas Flow Date: 11/1/2020 Terms: 48 Months Product: Fixed Price – Full Requirements Price: \$3.204 Annual Dths: 151,746 dth Accounts: 4 Type: Firm				

32a. QUANTITY IN COLUMN 21 HAS BEEN

☐ RECEIVED

☐ INSPECTED

☐ ACCEPTED, AND CONFORMS TO THE CONTRACT, EXCEPT AS NOTED: _____

32b. SIGNATURE OF AUTHORIZED GOVERNMENT REPRESENTATIVE

32c. DATE

32d. PRINTED NAME AND TITLE OF AUTHORIZED GOVERNMENT REPRESENTATIVE

32e. MAILING ADDRESS OF AUTHORIZED GOVERNMENT REPRESENTATIVE

32f. TELEPHONE NUMBER OF AUTHORIZED GOVERNMENT REPRESENTATIVE

32g. E-MAIL OF AUTHORIZED GOVERNMENT REPRESENTATIVE

33. SHIP NUMBER

34. VOUCHER NUMBER

35. AMOUNT VERIFIED
CORRECT FOR

36. PAYMENT

37. CHECK NUMBER

☐ PARTIAL ☐ FINAL

☐ COMPLETE ☐ PARTIAL ☐ FINAL

38. S/R ACCOUNT NO.

39. S/R VOUCHER NUMBER

40. PAID BY

41a. I CERTIFY THIS ACCOUNT IS CORRECT AND PROPER FOR PAYMENT

41b. SIGNATURE AND TITLE OF CERTIFYING OFFICER

41c. DATE

42a. RECEIVED BY *(Print)*

42b. RECEIVED AT *(Location)*

42c. DATE REC'D *(YY/MM/DD)*

42d. TOTAL CONTAINERS

AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT				1. CONTRACT ID CODE		PAGE 1 OF 1 PAGES	
2. AMENDMENT/MODIFICATION NUMBER 1		3. EFFECTIVE DATE 06/23/2020		4. REQUISITION/PURCHASE REQUISITION NUMBER 47PA0420R0021		5. PROJECT NUMBER (If applicable)	
6. ISSUED BY GSA, PBS, Energy Division 1800 F Street, NW Washington DC 20405		CODE PMAA		7. ADMINISTERED BY (If other than Item 6) GSA, PBS, Energy Division 1800 F Street, NW Washington DC 20405		CODE PMAA	
8. NAME AND ADDRESS OF CONTRACTOR (Number, street, county, State and ZIP Code) Direct Energy Business Marketing, LLC 198 Wood Avenue 2nd Floor Iselin, NJ 08830				(X)		9A. AMENDMENT OF SOLICITATION NUMBER	
				<input type="checkbox"/>		47PA0420R0021	
				<input type="checkbox"/>		9B. DATED (SEE ITEM 11)	
				<input type="checkbox"/>		10A. MODIFICATION OF CONTRACT/ORDER NUMBER	
CODE 7OUR6				FACILITY CODE		10B. DATED (SEE ITEM 13)	

11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS

☒ The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offers ☒ is extended. ☐ is not extended.

Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended, by one of the following methods:

(a) By completing items 8 and 15, and returning _____ copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or electronic communication which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by letter or electronic communication, provided each letter or electronic communication makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.

12. ACCOUNTING AND APPROPRIATION DATA (If required)

13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS. IT MODIFIES THE CONTRACT/ORDER NUMBER AS DESCRIBED IN ITEM 14.

CHECK ONE	A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: (Specify authority) THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NUMBER IN ITEM 10A.
<input type="checkbox"/>	
<input type="checkbox"/>	B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (such as changes in paying office, appropriation data, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(b).
<input checked="" type="checkbox"/>	C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF: Solicitation Number 47PA0420R0021
<input type="checkbox"/>	D. OTHER (Specify type of modification and authority)

E. IMPORTANT: Contractor ☒ is not ☐ is required to sign this document and return _____ copies to the issuing office.

14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF section headings, including solicitation/contract subject matter where feasible.)

1. Posting of responses to questions received. (Q&A document)
2. Revision to section A.13 of the Solicitation.
3. Extension of Proposal Due Date. Solicitation is amended to reflect a proposal due date of Monday, June 29, 2020.

Except as provided herein, all terms and conditions of the document referenced in Item 9A or 10A, as heretofore changed, remains unchanged and in full force and effect.

15A. NAME AND TITLE OF SIGNER (Type or print) Mark Taddeo, VP Sales		16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print) Ebony Atkinson	
15B. CONTRACTOR/OFFEROR <div style="background-color: black; color: white; padding: 5px; text-align: center;">Exemption b(6)</div>	15C. DATE SIGNED 6/26/20	16B. UNITED STATES OF AMERICA	16C. DATE SIGNED
(Signature of person authorized to sign)		(Signature of Contracting Officer)	

RFP VIEW: 78397 - RETAIL NATURAL GAS

[Edit](#)

General Information

Description:	48 Month-Full Requirements-Pricing Product II	Total Quantity (Term):	606,984 Dth
Customer Name:	General Services Administration (GSA)	Number of Accounts:	4
Customer Contact:	Ebony Atkinson		
Deal Number:	37700	Announcement:	15757
State/Province:	Illinois	Last Updated:	Erica Martunas, 9/1/2020 3:18:58 PM
Country:	USA		
Delivery Point:	Peoples Gas Light and Coke Company (GAS)		
Load Type:			
Rate Class:			

Auction Information

Auction Start Time:	9/1/2020 9:00:00 AM	RFP Status:	Closed: Awarded
Auction End Time:	9/1/2020 11:25:00 AM	Opening Bid (\$/Dth):	7.00000
Auction Type:	Open	Reserve Price (\$/Dth):	N/A
Auction Format:	Reverse - Buy	Time Left:	Auction Ended
Auction Currency:	USD - US Dollar	Total Bids:	8
Bid Significant Digits:	3	Low Bid (\$/Dth):	3.20400
Bid Increment (\$/Dth):	0.00100	Low Bidder:	Direct Energy Business Marketing, LLC

Contract Information

Delivery Start Date:	11/1/2020	Bill Type:	Dual
Delivery End Date:	10/31/2024	Payment Terms (days):	30
Contract Duration:	48 months	Payment Terms Description:	Days from Receipt
		Transaction Type:	Physical

Additional Contract Information

Exact Volumes:	False	Minimum Bandwidth Required (%):	100.00
Full Requirements:	True	Service Reliability:	Firm
Counter-Party Providing Balancing:	True	Trigger Rights Requested:	
Counter-Party Providing LDU Noms:	True		

Pricing Information

Form of Pricing:	Fixed	Pricing Index:	
		Index Price Estimate:	

Pricing Components

Additional Information

Comments to Bidders:

ATTACHMENT 1: CONTRACTOR INFORMATION

1. COMPANY:

COMPANY NAME: Direct Energy Business Marketing, LLC

ADDRESS: 194 Wood Avenue, 2nd Floor, Iselin, NJ 08830

Telephone Number: 1.800.437.7265

Fax Number: 1.866.239.5671

E-Mail Address: CustomerRelations@DirectEnergy.com

Exemption b(4)

CAGE CODE: 7OUR6

2. POINT OF CONTACT INFORMATION:

A. For CONTRACT ADMINISTRATION:

Name: Sandra Seastream

Address: 194 Wood Avenue, 2nd Floor, Iselin, NJ 08830

E-Mail Address: Sandra.Seastream@DirectEnergy.com

Phone: 732.781.0571

FAX:

B. For REMITTANCE

Name: Kathy Pranio

Address: 194 Wood Avenue, 2nd Floor, Iselin, NJ 08830

E-Mail Address: Kathy.Pranio@DirectEnergy..com

Phone: 732.516.3232

FAX: 1.866.421.0257

NOTE: ALL QUESTIONS MUST BE SUBMITTED IN WRITING TO ebony.atkinson@gsa.gov

SECTION A: SCOPE OF WORK

A.1 GENERAL

The General Services Administration's (GSA) Energy Division is issuing this solicitation for the supply of natural gas for accounts located behind various utility service territories. The accounts and their respective usage are expressed in the attached Exhibit 1 file. The Contractor shall supply the full natural gas requirements of the accounts for a term of up to sixty (60) full monthly billing cycles. Multiple awards are contemplated for this solicitation. Each contract will be administered by the contracting officer and account managers of GSA's Natural Gas Acquisition Program (NGAP).

GSA desires to secure the lowest cost, technically acceptable solution for natural gas supply and gas transportation to the accounts utilizing the most direct pipeline into the included utility service territories (hereafter referred to as the LDCs). NGAP utilizes a transaction platform provided by Enel X to collect pricing through an internet based reverse auction. The Government has organized its requirements for this solicitation in an Exhibit 1 excel spreadsheet. The service start date for the accounts vary by account and are specified in the Exhibit 1 file. The monthly volumes provided in the Exhibit 1 file for each account are burnertip volumes and will be the contract volumes for any awarded contract(s). The terms and conditions of this agreement will govern both firm and interruptible accounts, as specified by the LDC rate class designations listed in the Exhibit 1 file.

Multiple awards are contemplated for this solicitation. Contractor(s) selected will be responsible for the following duties:

- a) Supply of firm or interruptible natural gas supply for delivery to facility accounts including LDC, interstate and intrastate pipeline losses;
- b) Manage, nominate and schedule transportation service to the LDC citygate and manage the gas to the burnertip for each account;
- c) Communicate directly with the LDC to balance scheduled and actual receipt and delivery of each account's gas pursuant to the LDC's Transportation Service Agreement and this contract;
- d) Coordinate its actions with the LDC and the GSA point of contact; and
- e) Perform all other incidentals necessary to execute the duties set forth in subsections (a), (b), (c) and (d) above.

A.2 DELIVERY POINT

The "Natural Gas Delivery Point", as specified in Exhibit 1, for such natural gas shall be that point on the distribution system at which the LDC takes possession and ownership of the natural gas supply (citygate) for final delivery to each account's meter (i.e. burnertip).

A.3 NOMINATING AND BALANCING RESPONSIBILITIES

It is the Contractor's responsibility to conduct all required nominations on behalf of the accounts specified herein. The Contractor shall be fully familiar with the LDC and pipeline tariff provisions including operational and billing requirements such as imbalance policies, interstate/intrastate transmission losses of the LDC and other interstate/intrastate transmission companies. The Contractor shall include any costs or penalties associated with activities upstream of the Delivery Point in its price (e.g.: charges for balancing, nominating, storage, pooling costs, upstream and capacity requirements, billing charges, etc.).

The Government will not be responsible for any penalties or other costs caused by the Contractor. Any utility assets including natural gas banks assigned to and paid for by the account(s) included in this contract for transport or supply will be used solely for the transport of natural gas purchased for the account(s) included in this contract.

A.4 CREDIT FOR DEFAULT SUPPLY SERVICE

If at any time, unless as a result of an Excusable Delay (see FAR 52.212-4(f)), an account covered by this contract is forced to accept default supply service from the LDC serving in its capacity as the utility supplier of last resort as a result of action/inaction by the Contractor, the Contractor shall be responsible for payment of additional costs, if any, incurred.

A.5 RISK OF LOSS

Risk of loss of natural gas supplied under this contract shall remain with the Contractor prior to the Delivery Point and shall pass to the Government at and after the Delivery Point.

A.6 PROTECTION OF CONTRACT INFORMATION

The Government will take the necessary and usual steps to maintain the confidentiality of information submitted by offerors. The Contractor is advised that the Government will make all contract prices publicly available for the full contract period.

A.7 PAYMENT AND BILLING

For the purposes of this contract, Contractors will render monthly utility bills for each account included in this contract in accordance with the applicable LDC's dual billing procedures. The Contractor shall base all invoicing on metered quantities at the customer meter and all bills must be in dth or mmbtu volumes. Pricing shall be to the burnertip for each account and Contractor billed volumes must match burnertip volumes at the meter. However, if actual usage is not available, the contractor shall use the projected usage from Exhibit 1 and shall adjust all Exhibit 1 usage values to actual metered consumption levels no later than one (1) month after actual usage volumes are provided by the LDC. Contractors will be required to include any price components on the invoice other than the awarded price as itemized line items. It shall be the Contractor's responsibility to understand the specific details regarding the LDC's requirements for billing, reporting, and coordinating.

The Contractor expressly agrees and acknowledges that each Government facility to which supplies and services are provided pursuant to this contract will be separately responsible for and liable to pay for any such supplies or services. For the avoidance of doubt, GSA will be the responsible party for purposes of making payments for the accounts only where GSA is listed as the Agency on Exhibit 1. The Contractor also expressly agrees and acknowledges they will be required to submit invoices in accordance with each end use agency's billing requirements and systems which can include requirements for invoices to be submitted through online systems.

In addition to tendering original invoices to the authorized facility agency payment or finance office, it is also the Contractor's responsibility to ensure an electronic copy of each monthly billing invoice for each account is sent to gsa-ngap@gsa.gov within seven days of the original invoices being sent to the authorized agency payment or finance office. The invoices must not be password protected. It is the Contractor's responsibility to submit an electronic copy to the email address listed above, and not the Government's responsibility to pull invoices from the Contractor's billing system or to use that system to direct invoices to the email address listed above.

Contractors are required to establish a supplier account number for each account that is not exactly the same as the LDC account number and are required to establish unique supplier account numbers for each account they serve. Contractors cannot use exact same supplier account number for more than one account. Contractors are also required to include the LDC name, full service address and LDC account number on each invoice rendered. Additionally, any past due or outstanding balances must be included on monthly invoices and any associated late payment or finance charges must be clearly identified.

In utilities that utilize gas cash out methodologies in relation to gas marketer supply pools, GSA requires that Contractors minimize the impact to end-use Federal accounts to the extent possible. Any volumes billed to end-use Federal accounts that are a result of utility gas pool cash outs must be clearly identified on the Contractor's bills. These volumes and associated costs must be itemized and supported by appropriate documentation from the utility confirming the total dollar amount resulting from the utility required cash out.

A.8 ADDING AND DELETING ACCOUNTS TO THIS CONTRACT

It is possible that additional accounts not included in Exhibit 1 may be added to the resultant contract. In that event, the Government will provide the Contractor with the facility's natural gas requirement (if available) and the two parties shall enter into good faith negotiations to determine a price. A bilateral modification will be executed adding the line item on the Standard Form 30, Amendment of Solicitation/Modification of Award.

If the Government removes any accounts listed in Exhibit 1, the Government shall provide the Contractor with a written notice 45 business days before any such removal. The Government may unilaterally delete any accounts at its discretion. If accounts are deleted, the methodology provided in the tailored clause FAR 52.212-4 Termination for the Government's Convenience shall be used to calculate the early termination charges, if any. The provisions of this paragraph shall not apply to accounts with early end dates noted in Exhibit 1 at the time of contract award.

A.9 TERM

The initial term of this contract shall be for the number of full billing cycles specified in the Exhibit 1 for the awarded auction RFP. The service start and end dates shall be established by either the date specified in the auction schedule included in the Exhibit 1 file or the next meter read date immediately following the date specified in the auction schedule pursuant to specific LDC enrollment procedures. It will be the Contractor's responsibility to ensure that the delivery start date complies with these terms and any penalties resulting from missing the required service start date(s) shall be borne by the Contractor.

A.10 PRICING PRODUCT DESCRIPTIONS

Pricing Product I

During each month of delivery for the term of the contract, the Government may over or under burn the published volumes as specified by month for each account listed in Exhibit 1. The Contractor is responsible for supplying the facilities' full requirements under this option. The awarded contract price shall apply to the Exhibit 1 monthly volumes and those quantities over or under burned monthly within an established allowable percentage volume variance. For example: if twenty five percent (25%) allowable variance of the published volumes listed in Exhibit 1 is selected then:

1. The price of gas burned in excess of 125% of published volumes shall be found by using the applicable monthly price index published as "Midpoint Averages" in the monthly S&P Global Gas Daily Report for the associated month, plus transportation if any (if citygate index price, no transportation will

be added), fixed margin of \$0.10 per decatherm (dth), and procurement fee of \$0.05 per dth (as defined in Section A.18).

2. The price of any gas below 75% of published volumes that was not burned shall be found by using the applicable monthly price index published as "Midpoint Averages" in S&P Global Gas Daily Report for the associated month ("index price") and applied as follows:

a) If the index price is less than the fixed contract price, Contractor shall be entitled to compensation utilizing the following calculation: (fixed contract price - index price) * dth quantity below the applicable bandwidth.

b) If the index price is greater than the fixed contract price, customer shall receive credit utilizing the following calculation: (fixed contract price - index price) * one half the dth quantity below the applicable bandwidth.

NOTE: At the time the Contractor begins this calculation, the \$0.05/dth fixed procurement fee which is included in the awarded contract price shall be subtracted from calculation of either compensation or credit referenced in 2.a) and 2.b) above.

In addition to the monthly invoice as specified in Section A.7, Contractor shall submit to the account manager a spreadsheet listing the quantities of gas above or below the established allowable percentage volume variance, the applicable midpoint average index price, and as applicable, transportation cost, fixed \$0.10 margin, and fixed-procurement fee of \$0.05. These quantities shall be listed on the monthly invoice as a separate line item with any associated comments. Once the applicable pricing point has been chosen and documentation provided to the account manager, Contractors will not be allowed to switch for the remainder of the contract.

Pricing Product II

The supply of natural gas to be provided to each account shall be for one hundred percent (100%) usage, full requirements, at a firm fixed price with no guaranteed usage/volumes to the Contractor and no usage restrictions to the Government. Pricing shall be to the burnertip for each account and Contractor billed volumes must match burnertip volumes at the meter. The Government shall be invoiced monthly on actual usage at the awarded contract price. During any month of delivery for the term of the contract, the Government may over or under burn the Exhibit 1 volumes as specified by month for each account listed in Exhibit 1. In both over burn and under burn scenarios, the Government shall be invoiced at the awarded contract price for actual usage.

Only one pricing product will be requested for each account or account group and the pricing product requested will be specified in the Exhibit 1 file.

A.11 QUALITY AND MEASUREMENT

The Contractor is solely responsible for the quality of gas upstream of the citygate. Measurement, testing, heating value, delivery pressure, and quality of natural gas supply delivered shall be in accordance with the applicable interstate/intrastate pipeline specifications. Accounts shall not be obligated to purchase or pay for natural gas that either the LDC or the interstate pipeline has refused to accept due to non-conformance with its specifications. The Contractor shall furnish all labor, materials, tools, equipment, and incidentals to supply and deliver direct supply natural gas to the LDC citygate(s). The Contractor shall adhere at all times to applicable LDC tariff, agreements, rules and regulations.

A.12 LINE LOSSES

The Exhibit 1 volumes are burnertip volumes. Pipeline and LDC Line losses are to be included in the pricing submitted as Contractor billed volumes must match burnertip volumes at the meter. Line losses

are not included as part of any usage variance provision. The Contractor is responsible for analyzing all account data available to ensure adequate burnertip volumes are delivered

A.13 SERVICE INTERRUPTION

The Contractor is to notify the GSA Contracting Officer, GSA account manager and facility account Point of Contact prior to any LDC-issued interruption, supply curtailment, gas production period, entitlement period or operation flow order occurring. This notification must be provided in writing via e-mail with the starting date and times of the restrictions.

Contractors will need to follow the utilities direction on how to deliver gas to accounts during an LDC-issued interruption, supply curtailment, gas production period, entitlement period or operational flow order.

A.14 LOAD CHANGES DURING THE TERM OF THE CONTRACT

The Federal Government will not be penalized in any way for pursuing any projects that reduce natural gas load requirements except as expressly detailed under Section B, FAR 52.212-4, as tailored for this contract.

A.15 NATURAL GAS REGULATORY CHANGES

(a) The contract price includes all applicable Federal, State, and local regulations expected to be in effect and applicable to this contract at the time of contract award.

(b)(1) After-imposed Charges. After-imposed charges are new or increased charges that the Contractor is required to pay or bear as the result of legislative, judicial, regulatory or administrative action (whether Federal, State, or local) taking effect after the contract award date.

(2) After-relieved Charges. After-relieved charges are charges the Contractor is no longer required to pay or bear, or for which the Contractor obtains a refund or reduction, as the result of legislative, judicial, regulatory or administrative action (whether Federal, State, or local) taking effect after the contract award date.

(c) The contract price shall be increased by the amount of any after-imposed charges, provided the Contractor warrants in writing that no amount for such newly imposed Federal, State, and local regulation or rate increase was included in the contract price, as a contingency reserve or otherwise, and that the Contractor provides sufficient documentation to support the increase.

(d) The contract price shall be decreased by the amount of any after-relieved charges.

(e) Any increases or decreases in the contract price as a result of paragraphs (c) and (d) above shall be accomplished by a bilateral contract modification. In the event that the Government and the Contractor cannot agree to an acceptable contract adjustment, the Government will unilaterally adjust the contract price via modification subject to the Disputes provisions of FAR 52.212-4(d) incorporated in the contract.

A.16 CONTRACT ADMINISTRATION

After award, this contract shall be administered by the General Services Administration's Energy Division (PMA).

The Contracting Officer (CO) for the administration of contracts awarded as a result of this solicitation is:

Ebony N. Atkinson
U.S. General Services Administration
PBS Energy Division
1800 F Street, NW
Washington, DC 20405
(202) 501-2763
Ebony.atkinson@gsa.gov

The Account Manager for the day-to-day administration will be identified in the award notification provided to each Contractor at the time of award.

A.17 AUCTION PROCESS FOR PRICING USING ENEL X

The Government shall use an internet based transaction platform provided by Enel X, the Government's third-party contractor, to obtain pricing for this procurement. The offeror shall submit pricing to GSA using the Enel X platform in accordance with the instructions in Section C and the Enel X website. All prices submitted to the Enel X transaction platform shall be in accordance with the provisions of the solicitation. It shall be the responsibility of the offeror to understand both the rules and the mechanics of the Enel X transaction platform.

A.18 ENEL X FEE

The Contractor hereby agrees to pay a fee in the amount of \$0.05 per dth for all usage billed under this contract. The Contractor shall pay the fee directly to Enel X in accordance with the agreement, if any, executed between the Contractor and Enel X. The Contractor expressly recognizes and understands that the Government is not responsible for paying the fee to Enel X. To the extent a dispute occurs between the Contractor and Enel X regarding the fee, any such dispute shall be handled in accordance with the agreement executed between the Contractor and Enel X.

A.19 DAMAGES FOR MISSING CONTRACT START DATE

The Contractor will be responsible for enrolling new accounts with the LDC and/or switching Government accounts from the current natural gas supplier (LDC or third-party supplier) to Contractor and fulfilling any obligations with the LDC to that end. The Government will make its best effort to ensure that all accounts included under this Solicitation and the resulting auctions are transportable. However, it is the Contractor's ultimate responsibility to verify that both new and existing accounts are transportable and will continue to be over the life of the term awarded. All costs associated with a Contractor not being able to service an account based on non-transportability issues will be borne by the Contractor and not the Government. Post-award, Contractors will be responsible for notifying the Contracting Officer of any discrepancies associated with the number of meters associated with each LDC account awarded to them.

A.20 MATERIAL CHANGE

The Contracting Officer will notify the Contractor if the Government anticipates an annual change of plus or minus 25% or more to the total estimated volumes in Exhibit 1 (a "Material Change") for accounts awarded under Pricing Product II. Volume Increases or decreases caused by fluctuations in weather will not be included in the 25% calculation, only changes in the way each end-use facility operates. **Equitable adjustments made under this section will only include natural gas quantities beyond the 25% tolerance and must be based on the aggregate annual volumes included in Exhibit 1 for each Pricing Group.**

Any resulting costs owed by or credits owed to the Government associated with liquidation of contracted natural gas positions by the Contractor for an account in the event of a Material Change will be determined in accordance with the calculations provided in the tailored Termination for Convenience clause FAR 52.212-4(l) in this contract. Notwithstanding the foregoing, regarding LDC costs, if the GSA Contracting Officer notifies the Contractor in writing within 15 days of a Material Change occurring, the Contractor will pay any costs imposed by the LDC including but not limited to charges, penalties, or fines. If the Contracting Officer fails to notify the Contractor of a Material Change, the Government will be responsible for such reasonable LDC costs.

Any costs owed by or credits owed to the Government associated with liquidation of contracted natural gas positions by the Contractor for an account in the event of a Material Change shall be supported by proof of gas sales resulting from the liquidation. All such costs shall be itemized and supported by appropriate proofs of payment or settlement statements confirming the total dollar amount resulting from the liquidation. Contractors shall provide all cost or credit related calculations and backup information within three (3) months of the Contractor first being notified of a Material Change.

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SECTION B: FEDERAL ACQUISITION REGULATION (FAR) CLAUSES

B.1 CLAUSES INCORPORATED BY REFERENCE

The full text of clauses/provisions incorporated by reference can be accessed at www.acquisition.gov.

FAR 52.212-1 Instructions to Offerors-Commercial Items (OCT 2018)

[Reference FAR 12.301(b)(1)]

Addendum to FAR 52.212-1

The offeror agrees to hold the prices offered in response to this solicitation until 2:00 p.m. EDT on the date specified in Section C.2 of this solicitation.

GSAR 552.212-71 Contract Terms and Conditions Applicable to GSA Acquisition of Commercial Items (MAY 2019)

[Reference GSAR 512.301(a)(1)],

(a) The Contractor agrees to comply with any clause that is incorporated herein by reference to implement agency policy applicable to acquisition of commercial items or components. The clause in effect based on the applicable regulation cited on the date the solicitation is issued applies unless otherwise stated herein. The clauses in paragraph (b) of this section are incorporated by reference:

(b) Clauses.

GSAR 552.203-71	Restriction on Advertising
GSAR 552.211-73	Marking
GSAR 552.215-70	Examination of Records by GSA
GSAR 552.232-23	Assignment of Claims

FAR 52.204-16 Commercial and Government Entity Code Reporting (JUL 2016)

[Reference FAR 4.1804(a)]

FAR 52.204-18 Commercial and Government Entity Code Reporting (JUL 2016)

[Reference FAR 4.1804(c)]

B.2 CLAUSES IN FULL TEXT

FAR 52.212-2 Evaluation-Commercial Items

[Reference FAR 12.301(c)]

EVALUATION-COMMERCIAL ITEMS (OCT 2014)

(a) The Government will award a contract resulting from this solicitation to the responsible offeror whose offer conforming to the solicitation will be most advantageous to the Government, price and

other factors considered. The following factors shall be used to evaluate offers:

The basis for this evaluation is prescribed in Section D.

(b) *Options*. The Government will evaluate offers for award purposes by adding the total price for all options to the total price for the basic requirement. The Government may determine that an offer is unacceptable if the option prices are significantly unbalanced. Evaluation of options shall not obligate the Government to exercise the option(s).

(c) A written notice of award or acceptance of an offer mailed or otherwise furnished to the successful offeror within the time for acceptance specified in the offer, shall result in a binding contract without further action by either party. Before the offer's specified expiration time, the Government may accept an offer (or part of an offer), whether or not there are negotiations after its receipt, unless a written notice of withdrawal is received before award.

(End of provision)

52.212-5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders-Commercial Items.

As prescribed in [12.301\(b\)\(4\)](#), insert the following clause:

CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS- COMMERCIAL ITEMS (MAR 2020)

(a) The Contractor shall comply with the following Federal Acquisition Regulation (FAR) clauses, which are incorporated in this contract by reference, to implement provisions of law or Executive orders applicable to acquisitions of commercial items:

(1) [52.203-19](#), Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements (JAN 2017) (section 743 of Division E, Title VII, of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113-235) and its successor provisions in subsequent appropriations acts (and as extended in continuing resolutions)).

(2) [52.204-23](#), Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities (JUL 2018) (Section 1634 of Pub. L. 115-91).

(3) [52.204-25](#), Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment. (AUG 2019) (Section 889(a)(1)(A) of Pub. L. 115-232).

(4) [52.209-10](#), Prohibition on Contracting with Inverted Domestic Corporations (Nov 2015).

(5) [52.233-3](#), Protest After Award (AUG 1996) ([31 U.S.C. 3553](#)).

(6) [52.233-4](#), Applicable Law for Breach of Contract Claim (OCT 2004) (Public Laws 108-77 and 108-78 ([19 U.S.C. 3805note](#))).

(b) The Contractor shall comply with the FAR clauses in this paragraph (b) that the Contracting Officer has indicated as being incorporated in this contract by reference to implement provisions of law or Executive orders applicable to acquisitions of commercial items:

[Contracting Officer check as appropriate.]

__XX__ (1) [52.203-6](#), Restrictions on Subcontractor Sales to the Government (SEP 2006), with Alternate I (OCT 1995) ([41 U.S.C. 4704](#) and [10 U.S.C. 2402](#)).

__ (2) [52.203-13](#), Contractor Code of Business Ethics and Conduct (OCT 2015) ([41 U.S.C. 3509](#))).

__ (3) [52.203-15](#), Whistleblower Protections under the American Recovery and Reinvestment Act of 2009 (JUN 2010) (Section 1553 of Pub. L. 111-5). (Applies to contracts funded by the American Recovery and Reinvestment Act of 2009.)

__XX__ (4) [52.204-10](#), Reporting Executive Compensation and First-Tier Subcontract Awards (OCT 2018) (Pub. L. 109-282) ([31 U.S.C. 6101 note](#)).

__ (5) [Reserved].

__ (6) [52.204-14](#), Service Contract Reporting Requirements (OCT 2016) (Pub. L. 111-117, section 743 of Div. C).

__ (7) [52.204-15](#), Service Contract Reporting Requirements for Indefinite-Delivery Contracts (OCT 2016) (Pub. L. 111-117, section 743 of Div. C).

__ (8) [52.209-6](#), Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment. (OCT 2015) ([31 U.S.C. 6101 note](#)).

__ (9) [52.209-9](#), Updates of Publicly Available Information Regarding Responsibility Matters (OCT 2018) ([41 U.S.C. 2313](#)).

__ (10) [Reserved].

__ (11)

(i) [52.219-3](#), Notice of HUBZone Set-Aside or Sole-Source Award (MAR 2020) ([15 U.S.C. 657a](#)).

__ (ii) Alternate I (MAR 2020) of [52.219-3](#).

__XX__ (12)

(i) [52.219-4](#), Notice of Price Evaluation Preference for HUBZone Small Business Concerns (MAR 2020) (if the offeror elects to waive the preference, it shall so indicate in its offer) ([15 U.S.C. 657a](#)).

__ (ii) Alternate I (MAR 2020) of [52.219-4](#).

__ (13) [Reserved]

__ (14)

(i) [52.219-6](#), Notice of Total Small Business Set-Aside (MAR 2020) ([15 U.S.C.644](#)).

___ (ii) Alternate I (MAR 2020).

___ (15)

(i) [52.219-7](#), Notice of Partial Small Business Set-Aside (MAR 2020) ([15 U.S.C. 644](#)).

___ (ii) Alternate I (MAR 2020) of [52.219-7](#).

___XX (16) [52.219-8](#), Utilization of Small Business Concerns (Oct 2018) ([15 U.S.C. 637\(d\)\(2\)](#) and (3)).

___XX (17)

(i) [52.219-9](#), Small Business Subcontracting Plan (Mar 2020) ([15 U.S.C. 637\(d\)\(4\)](#)).

___ (ii) Alternate I (Nov 2016) of [52.219-9](#).

___ (iii) Alternate II (Nov 2016) of [52.219-9](#).

___ (iv) Alternate III (MAR 2020) of [52.219-9](#).

___ (v) Alternate IV (AUG 2018) of [52.219-9](#)

___ (18) [52.219-13](#), Notice of Set-Aside of Orders (MAR 2020) ([15 U.S.C. 644\(r\)](#)).

___ (19) [52.219-14](#), Limitations on Subcontracting (MAR 2020) ([15 U.S.C.637\(a\)\(14\)](#)).

___ (20) [52.219-16](#), Liquidated Damages-Subcontracting Plan (JAN 1999) ([15 U.S.C. 637\(d\)\(4\)\(F\)\(i\)](#)).

___ (21) [52.219-27](#), Notice of Service-Disabled Veteran-Owned Small Business Set-Aside (MAR 2020) ([15 U.S.C. 657f](#)).

___ (22)

(i) [52.219-28](#), Post Award Small Business Program Rerepresentation (MAR 2020) ([15 U.S.C. 632\(a\)\(2\)](#)).

(ii) Alternate I (MAR 2020) of [52.219-28](#).

___ (23) [52.219-29](#), Notice of Set-Aside for, or Sole Source Award to, Economically Disadvantaged Women-Owned Small Business Concerns (MAR 2020) ([15 U.S.C. 637\(m\)](#)).

___ (24) [52.219-30](#), Notice of Set-Aside for, or Sole Source Award to, Women-Owned Small Business Concerns Eligible Under the Women-Owned Small Business Program (Mar 2020) ([15 U.S.C. 637\(m\)](#)).

___ (25) 52.219-32, Orders Issued Directly Under Small Business Reserves (MAR 2020) ([15 U.S.C. 644\(r\)](#)).

___ (26) 52.219-33, Nonmanufacturer Rule (MAR 2020) ([15 U.S.C. 637\(a\)\(17\)](#)).

___ (27) [52.222-3](#), Convict Labor (JUN 2003) (E.O.11755).

___ [XX](#) (28) [52.222-19](#), Child Labor-Cooperation with Authorities and Remedies (JAN 2020) (E.O.13126).

___ [XX](#) (29) [52.222-21](#), Prohibition of Segregated Facilities (APR 2015).

___ [XX](#) (30)

(i) [52.222-26](#), Equal Opportunity (SEP 2016) (E.O.11246).

___ (ii) Alternate I (FEB 1999) of [52.222-26](#).

___ [XX](#) (31)

(i) [52.222-35](#), Equal Opportunity for Veterans (Oct 2015) ([38 U.S.C. 4212](#)).

___ (ii) Alternate I (JUL 2014) of [52.222-35](#).

___ [XX](#) (32)

(i) [52.222-36](#), Equal Opportunity for Workers with Disabilities (JUL 2014) ([29 U.S.C.793](#)).

___ (ii) Alternate I (JUL 2014) of [52.222-36](#).

[XX](#) (33) [52.222-37](#), Employment Reports on Veterans (FEB 2016) ([38 U.S.C. 4212](#)).

___ [XX](#) (34) [52.222-40](#), Notification of Employee Rights Under the National Labor Relations Act (DEC 2010) (E.O. 13496).

___ (35)

(i) [52.222-50](#), Combating Trafficking in Persons (JAN 2019) ([22 U.S.C. chapter 78](#) and E.O. 13627).

___ (ii) Alternate I (MAR 2015) of [52.222-50](#) ([22 U.S.C. chapter78](#) and E.O. 13627).

___ (36) [52.222-54](#), Employment Eligibility Verification (OCT 2015). (Executive Order 12989). (Not applicable to the acquisition of commercially available off-the-shelf items or certain other types of commercial items as prescribed in [22.1803](#).)

___ (37)

(i) [52.223-9](#), Estimate of Percentage of Recovered Material Content for EPA–Designated Items (May 2008) ([42 U.S.C. 6962\(c\)\(3\)\(A\)\(ii\)](#)). (Not applicable to the acquisition of commercially available off-the-shelf items.)

___ (ii) Alternate I (MAY 2008) of [52.223-9](#) ([42 U.S.C. 6962\(i\)\(2\)\(C\)](#)). (Not applicable to the acquisition of commercially available off-the-shelf items.)

___ (38) [52.223-11](#), Ozone-Depleting Substances and High Global Warming Potential Hydrofluorocarbons (JUN 2016) (E.O. 13693).

___ (39) [52.223-12](#), Maintenance, Service, Repair, or Disposal of Refrigeration Equipment and Air Conditioners (JUN 2016) (E.O. 13693).

___ (40)

(i) [52.223-13](#), Acquisition of EPEAT®-Registered Imaging Equipment (JUN 2014) (E.O.s 13423 and 13514).

___ (ii) Alternate I (OCT 2015) of [52.223-13](#).

___ (41)

(i) [52.223-14](#), Acquisition of EPEAT®-Registered Televisions (JUN 2014) (E.O.s 13423 and 13514).

___ (ii) Alternate I (JUN 2014) of [52.223-14](#).

___ (42) [52.223-15](#), Energy Efficiency in Energy-Consuming Products (DEC 2007) ([42 U.S.C. 8259b](#)).

___ (43)

(i) [52.223-16](#), Acquisition of EPEAT®-Registered Personal Computer Products (OCT 2015) (E.O.s 13423 and 13514).

___ (ii) Alternate I (JUN 2014) of [52.223-16](#).

___ (44) [52.223-18](#), Encouraging Contractor Policies to Ban Text Messaging While Driving (AUG 2011) (E.O. 13513).

___ (45) [52.223-20](#), Aerosols (JUN 2016) (E.O. 13693).

___ ~~XX~~ (46) [52.223-21](#), Foams (JUN 2016) (E.O. 13693).

___ (47)

(i) [52.224-3](#) Privacy Training (Jan 2017) (5 U.S.C. 552 a).

___ (ii) Alternate I (JAN 2017) of [52.224-3](#).

___ (48) [52.225-1](#), Buy American-Supplies (May 2014) ([41 U.S.C. chapter 83](#)).

___ XX (49)

(i) [52.225-3](#), Buy American-Free Trade Agreements-Israeli Trade Act (MAY 2014) ([41 U.S.C. chapter 83](#), [19 U.S.C. 3301](#) note, [19 U.S.C. 2112](#) note, [19 U.S.C. 3805](#) note, [19 U.S.C. 4001](#) note, Pub. L. 103-182, 108-77, 108-78, 108-286, 108-302, 109-53, 109-169, 109-283, 110-138, 112-41, 112-42, and 112-43).

___ (ii) Alternate I (MAY 2014) of [52.225-3](#).

___ (iii) Alternate II (MAY 2014) of [52.225-3](#).

___ (iv) Alternate III (MAY 2014) of [52.225-3](#).

___ (50) [52.225-5](#), Trade Agreements (OCT 2019) ([19 U.S.C. 2501](#), *et seq.*, [19 U.S.C. 3301](#) note).

___ (51) [52.225-13](#), Restrictions on Certain Foreign Purchases (JUN 2008) (E.O.'s, proclamations, and statutes administered by the Office of Foreign Assets Control of the Department of the Treasury).

___ (52) [52.225-26](#), Contractors Performing Private Security Functions Outside the United States (Oct 2016) (Section 862, as amended, of the National Defense Authorization Act for Fiscal Year 2008; [10 U.S.C. 2302 Note](#)).

___ (53) [52.226-4](#), Notice of Disaster or Emergency Area Set-Aside (Nov 2007) ([42 U.S.C. 5150](#)).

___ (54) [52.226-5](#), Restrictions on Subcontracting Outside Disaster or Emergency Area (Nov 2007) ([42 U.S.C. 5150](#)).

___ (55) [52.232-29](#), Terms for Financing of Purchases of Commercial Items (FEB 2002) ([41 U.S.C. 4505](#), [10 U.S.C. 2307\(f\)](#)).

___ (56) [52.232-30](#), Installment Payments for Commercial Items (Jan 2017) ([41 U.S.C. 4505](#), [10 U.S.C. 2307\(f\)](#)).

___ XX (57) [52.232-33](#), Payment by Electronic Funds Transfer-System for Award Management (OCT 2018) ([31 U.S.C. 3332](#)).

___ (58) [52.232-34](#), Payment by Electronic Funds Transfer-Other than System for Award Management (Jul 2013) ([31 U.S.C. 3332](#)).

___ (59) [52.232-36](#), Payment by Third Party (MAY 2014) ([31 U.S.C. 3332](#)).

___ (60) [52.239-1](#), Privacy or Security Safeguards (AUG 1996) ([5 U.S.C. 552a](#)).

___ (61) [52.242-5](#), Payments to Small Business Subcontractors (JAN 2017) ([15 U.S.C. 637\(d\)\(13\)](#)).

___ (62)

(i) [52.247-64](#), Preference for Privately Owned U.S.-Flag Commercial Vessels (FEB 2006) ([46 U.S.C. Appx. 1241\(b\)](#) and [10 U.S.C. 2631](#)).

___ (ii) Alternate I (APR 2003) of [52.247-64](#).

___ (iii) Alternate II (FEB 2006) of [52.247-64](#).

(c) The Contractor shall comply with the FAR clauses in this paragraph (c), applicable to commercial services, that the Contracting Officer has indicated as being incorporated in this contract by reference to implement provisions of law or Executive orders applicable to acquisitions of commercial items:

[Contracting Officer check as appropriate.]

X (1) [52.222-17](#), Nondisplacement of Qualified Workers (MAY 2014)(E.O. 13495).

___ (2) [52.222-41](#), Service Contract Labor Standards (AUG 2018) ([41 U.S.C. chapter 67](#)).

X (3) [52.222-42](#), Statement of Equivalent Rates for Federal Hires (MAY 2014) ([29 U.S.C. 206](#) and [41 U.S.C. chapter 67](#)).

X (4) [52.222-43](#), Fair Labor Standards Act and Service Contract Labor Standards-Price Adjustment (Multiple Year and Option Contracts) (AUG 2018) ([29 U.S.C. 206](#) and [41 U.S.C. chapter 67](#)).

X (5) [52.222-44](#), Fair Labor Standards Act and Service Contract Labor Standards-Price Adjustment (May 2014) ([29 U.S.C. 206](#) and [41 U.S.C. chapter 67](#)).

___ (6) [52.222-51](#), Exemption from Application of the Service Contract Labor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment-Requirements (May 2014) ([41 U.S.C. chapter 67](#)).

___ (7) [52.222-53](#), Exemption from Application of the Service Contract Labor Standards to Contracts for Certain Services-Requirements (MAY 2014) ([41 U.S.C. chapter 67](#)).

___ (8) [52.222-55](#), Minimum Wages Under Executive Order 13658 (DEC 2015).

___ (9) [52.222-62](#), Paid Sick Leave Under Executive Order 13706 (JAN 2017) (E.O. 13706).

___ (10) [52.226-6](#), Promoting Excess Food Donation to Nonprofit Organizations (MAY 2014) ([42 U.S.C. 1792](#)).

(d) *Comptroller General Examination of Record*. The Contractor shall comply with the provisions of this paragraph (d) if this contract was awarded using other than sealed bid, is in excess of the

simplified acquisition threshold, and does not contain the clause at [52.215-2](#), Audit and Records-Negotiation.

(1) The Comptroller General of the United States, or an authorized representative of the Comptroller General, shall have access to and right to examine any of the Contractor's directly pertinent records involving transactions related to this contract.

(2) The Contractor shall make available at its offices at all reasonable times the records, materials, and other evidence for examination, audit, or reproduction, until 3 years after final payment under this contract or for any shorter period specified in FAR [subpart 4.7](#), Contractor Records Retention, of the other clauses of this contract. If this contract is completely or partially terminated, the records relating to the work terminated shall be made available for 3 years after any resulting final termination settlement. Records relating to appeals under the disputes clause or to litigation or the settlement of claims arising under or relating to this contract shall be made available until such appeals, litigation, or claims are finally resolved.

(3) As used in this clause, records include books, documents, accounting procedures and practices, and other data, regardless of type and regardless of form. This does not require the Contractor to create or maintain any record that the Contractor does not maintain in the ordinary course of business or pursuant to a provision of law.

(e)

(1) Notwithstanding the requirements of the clauses in paragraphs (a), (b), (c), and (d) of this clause, the Contractor is not required to flow down any FAR clause, other than those in this paragraph (e)(1) in a subcontract for commercial items. Unless otherwise indicated below, the extent of the flow down shall be as required by the clause-

(i) [52.203-13](#), Contractor Code of Business Ethics and Conduct (OCT 2015) ([41 U.S.C. 3509](#)).

(ii) [52.203-19](#), Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements (Jan 2017) (section 743 of Division E, Title VII, of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113-235) and its successor provisions in subsequent appropriations acts (and as extended in continuing resolutions)).

(iii) [52.204-23](#), Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities (JUL 2018) (Section 1634 of Pub. L. 115-91).

(iv) [52.204-25](#), Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment. (AUG 2019) (Section 889(a)(1)(A) of Pub. L. 115-232).

(v) [52.219-8](#), Utilization of Small Business Concerns (OCT 2018) ([15 U.S.C.637\(d\)\(2\)](#) and (3)), in all subcontracts that offer further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds \$700,000 (\$1.5 million for construction of any public facility), the subcontractor must include [52.219-8](#) in lower tier subcontracts that offer subcontracting opportunities.

(vi) [52.222-17](#), Nondisplacement of Qualified Workers (May 2014) (E.O. 13495). Flow down required in accordance with paragraph (l) of FAR clause [52.222-17](#).

(vii) [52.222-21](#), Prohibition of Segregated Facilities (APR 2015).

(viii) [52.222-26](#), Equal Opportunity (SEP 2015) (E.O. 11246).

(ix) [52.222-35](#), Equal Opportunity for Veterans (OCT 2015) ([38 U.S.C. 4212](#)).

(x) [52.222-36](#), Equal Opportunity for Workers with Disabilities (Jul 2014) ([29 U.S.C. 793](#)).

(xi) [52.222-37](#), Employment Reports on Veterans (Feb 2016) ([38 U.S.C. 4212](#))

(xii) [52.222-40](#), Notification of Employee Rights Under the National Labor Relations Act (DEC 2010) (E.O. 13496). Flow down required in accordance with paragraph (f) of FAR clause [52.222-40](#).

(xiii) [52.222-41](#), Service Contract Labor Standards (Aug 2018) ([41 U.S.C. chapter 67](#)).

(xiv)

(A) [52.222-50](#), Combating Trafficking in Persons (JAN 2019) ([22 U.S.C. chapter 78](#) and E.O. 13627).

(B) Alternate I (Mar 2015) of [52.222-50](#) ([22 U.S.C. chapter 78](#) and E.O. 13627).

(xv) [52.222-51](#), Exemption from Application of the Service Contract Labor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment-Requirements (May 2014) ([41 U.S.C. chapter 67](#)).

(xvi) [52.222-53](#), Exemption from Application of the Service Contract Labor Standards to Contracts for Certain Services-Requirements (MAY 2014) ([41 U.S.C. chapter 67](#)).

(xvii) [52.222-54](#), Employment Eligibility Verification (OCT 2015) (E.O. 12989).

(xviii) [52.222-55](#), Minimum Wages Under Executive Order 13658 (DEC 2015).

(xix) [52.222-62](#), Paid Sick Leave Under Executive Order 13706 (JAN 2017) (E.O. 13706).

(xx)

(A) [52.224-3](#), Privacy Training (Jan 2017) ([5 U.S.C. 552a](#)).

(B) Alternate I (JAN 2017) of [52.224-3](#).

(xxi) [52.225-26](#), Contractors Performing Private Security Functions Outside the United States (OCT 2016) (Section 862, as amended, of the National Defense Authorization Act for Fiscal Year 2008; [10 U.S.C. 2302 Note](#)).

(xxii) [52.226-6](#), Promoting Excess Food Donation to Nonprofit Organizations (MAY 2014) ([42 U.S.C. 1792](#)). Flow down required in accordance with paragraph (e) of FAR clause [52.226-6](#).

(xxiii) [52.247-64](#), Preference for Privately Owned U.S.-Flag Commercial Vessels (FEB 2006) ([46 U.S.C. Appx.1241\(b\)](#) and [10 U.S.C.2631](#)). Flow down required in accordance with paragraph (d) of FAR clause [52.247-64](#).

(2) While not required, the Contractor may include in its subcontracts for commercial items a minimal number of additional clauses necessary to satisfy its contractual obligations.

(End of clause)

FAR 52.216-18 Ordering.

[Reference FAR 16.506(a)]

ORDERING (Oct 1995)

(a) Any supplies and services to be furnished under this contract shall be ordered by issuance of delivery orders or task orders by the individuals or activities designated in the Schedule. Such orders may be issued during the term of this contract which is anticipated to be July 1, 2020 through July, 2023.

(b) All delivery orders or task orders are subject to the terms and conditions of this contract. In the event of conflict between a delivery order or task order and this contract, the contract shall control.

(c) If mailed, a delivery order or task order is considered "issued" when the Government deposits the order in the mail. Orders may be issued orally, by facsimile, or by electronic commerce methods only if authorized in the Schedule.

(End of clause)

FAR 52.216-21 Requirements

[Reference FAR 16.506(d)]

REQUIREMENTS (Oct 1995)

(a) This is a requirements contract for the supplies or services specified and effective for the period stated, in the Schedule. The quantities of supplies or services specified in the Schedule are estimates only and are not purchased by this contract. Except as this contract may otherwise provide, if the Government's requirements do not result in orders in the quantities described as "estimated" or "maximum" in the Schedule, that fact shall not constitute the basis for an equitable price adjustment.

(b) Delivery or performance shall be made only as authorized by orders issued in accordance with the Ordering clause. Subject to any limitations in the Order Limitations clause or elsewhere in this contract, the Contractor shall furnish to the Government all supplies or services specified in the Schedule and called for by orders issued in accordance with the Ordering clause. The Government may issue orders requiring delivery to multiple destinations or performance at multiple locations.

(c) Except as this contract otherwise provides, the Government shall order from the Contractor all the supplies or services specified in the Schedule that are required to be purchased by the Government activity or activities specified in the Schedule.

(d) The Government is not required to purchase from the Contractor requirements in excess of any limit on total orders under this contract.

(e) If the Government urgently requires delivery of any quantity of an item before the earliest date that delivery may be specified under this contract, and if the Contractor will not accept an order providing for the accelerated delivery, the Government may acquire the urgently required goods or services from another source.

(f) Any order issued during the effective period of this contract and not completed within that period shall be completed by the Contractor within the time specified in the order. The contract shall govern the Contractor's and Government's rights and obligations with respect to that order to the same extent as if the order were completed during the contract's effective period; provided, that the Contractor shall not be required to make any deliveries under this contract after date specified in the contract.

(End of clause)

FAR 52.233-2 Service of Protest
[Reference FAR 33.106]

SERVICE OF PROTEST (SEPT 2006)

(a) Protests, as defined in section [31.101](#) of the Federal Acquisition Regulation, that are filed directly with an agency, and copies of any protests that are filed with the Government Accountability Office (GAO), shall be served on the Contracting Officer (addressed as follows) by obtaining written and dated acknowledgment of receipt from:

Ebony Atkinson
U.S. General Services Administration
PBS Energy Division
1800 F Street, NW
Washington, DC 20405
ebony.atkinson@gsa.gov

(b) The copy of any protest shall be received in the office designated above within one day of filing a protest with the GAO.

(End of provision)

GSAR 552.212-4 Contract Terms and Conditions – Commercial Items (FAR DEVIATION) (FEB 2018)

[Reference FAR 12.301(b)(3)]

Paragraphs (k), (l), (n), (o), (p) contain tailored addendums in accordance with GSAM 512.302(a)

(a) *Inspection/Acceptance*. The Contractor shall only tender for acceptance those items that conform to the requirements of this contract. The ordering activity reserves the right to inspect or test any supplies or services that have been tendered for acceptance. The ordering activity may require repair or replacement of nonconforming supplies or reperformance of nonconforming services at no increase in

contract price. If repair/replacement or reperformance will not correct the defects or is not possible, the ordering activity may seek an equitable price reduction or adequate consideration for acceptance of nonconforming supplies or services. The ordering activity must exercise its post-acceptance rights —

- (1) Within a reasonable time after the defect was discovered or should have been discovered; and
- (2) Before any substantial change occurs in the condition of the item, unless the change is due to the defect in the item.

(b) *Assignment*. The Contractor or its assignee may assign its rights to receive payment due as a result of performance of this contract to a bank, trust company, or other financing institution, including any Federal lending agency in accordance with the Assignment of Claims Act (31 U.S.C. 3727). However, when a third party makes payment (e.g., use of the credit card), the Contractor may not assign its rights to receive payment under this contract.

(c) *Changes*. Changes in the terms and conditions of this contract may be made only by written agreement of the parties.

(d) *Disputes*. This contract is subject to 41 U.S.C. chapter 71, Contract Disputes. Failure of the parties to this contract to reach agreement on any request for equitable adjustment, claim, appeal or action arising under or relating to this contract shall be a dispute to be resolved in accordance with the clause at FAR 52.233-1, Disputes, which is incorporated herein by reference. The Contractor shall proceed diligently with performance of this contract, pending final resolution of any dispute arising under the contract.

(e) *Definitions*. The clause at FAR 52.202-1, Definitions, is incorporated herein by reference.

(f) *Excusable delays*. The Contractor shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the ordering activity in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

(g) *Invoice (TAILORED)*.

(1) The Contractor shall submit an original invoice and three copies (or electronic invoice, if authorized) to the address designated in the contract to receive invoices. An invoice must include —

- (i) Name and address of the Contractor;
- (ii) Invoice date and number;
- (iii) Contract number, line item number and, if applicable, the order number;
- (iv) Description, quantity, unit of measure, unit price and extended price of the items delivered;

(v) Shipping number and date of shipment, including the bill of lading number and weight of shipment if shipped on an ordering activity bill of lading;

(vi) Terms of any discount for prompt payment offered;

(vii) Name and address of official to whom payment is to be sent;

(viii) Name, title, and phone number of person to notify in event of defective invoice; and

(ix) Taxpayer Identification Number (TIN). The Contractor shall include its TIN on the invoice only if required elsewhere in this contract.

(x) Electronic funds transfer (EFT) banking information.

(A) The Contractor shall include EFT banking information on the invoice only if required elsewhere in this contract.

(B) If EFT banking information is not required to be on the invoice, in order for the invoice to be a proper invoice, the Contractor shall have submitted correct EFT banking information in accordance with the applicable solicitation provision, contract clause (e.g., 52.232-33, *Payment by Electronic Funds Transfer — System for Award Management*, or 52.232-34, *Payment by Electronic Funds Transfer—Other Than System for Award Management*), or applicable agency procedures.

(C) EFT banking information is not required if the ordering activity waived the requirement to pay by EFT.

(2) The due date for making invoice payments by the designated payment office is the later of the following two events:

(i) The 30th day after the designated billing office receives a proper invoice from the Contractor. If the designated billing office fails to annotate the invoice with the date of receipt at the time of receipt, the invoice payment due date shall be the 10th day after the date of the Contractor's invoice; provided the Contractor submitted a proper invoice and no disagreement exists over quantity, quality, or Contractor compliance with contract requirements.

(ii) The 30th day after ordering activity acceptance of supplies delivered or services-performed by the Contractor.

(h) *Patent indemnity*. The Contractor shall indemnify the ordering activity and its officers, employees and agents against liability, including costs, for actual or alleged direct or contributory infringement of, or inducement to infringe, any United States or foreign patent, trademark or copyright, arising out of the performance of this contract, provided the Contractor is reasonably notified of such claims and proceedings.

(i) *Payment*.

(1) *Items accepted*. Payment shall be made for items accepted by the ordering activity that have

been delivered to the delivery destinations set forth in this contract.

(2) *Prompt payment.* The ordering activity will make payment in accordance with the Prompt Payment Act (31 U.S.C. 3903) and prompt payment regulations at 5 CFR part 1315.

(3) *Electronic Funds Transfer (EFT).* If the ordering activity makes payment by EFT, see 52.212-5(b) for the appropriate EFT clause.

(4) *Discount.* In connection with any discount offered for early payment, time shall be computed from the date of the invoice. For the purpose of computing the discount earned, payment shall be considered to have been made on the date which appears on the payment check or the specified payment date if an electronic funds transfer payment is made.

(5) *Overpayments.* If the Contractor becomes aware of a duplicate contract financing or invoice payment or that the ordering activity has otherwise overpaid on a contract financing or invoice payment, the Contractor shall —

(i) Remit the overpayment amount to the payment office cited in the contract along with a description of the overpayment including the —

(A) Circumstances of the overpayment (e.g., duplicate payment, erroneous payment, liquidation errors, date(s) of overpayment);

(B) Affected contract number and delivery order number, if applicable;

(C) Affected line item or subline item, if applicable; and

(D) Contractor point of contact.

(ii) Provide a copy of the remittance and supporting documentation to the Contracting Officer.

(6) Interest.

(i) All amounts that become payable by the Contractor to the ordering activity under this contract shall bear simple interest from the date due until paid unless paid within 30 days of becoming due. The interest rate shall be the interest rate established by the Secretary of the Treasury as provided in 41 U.S.C. 7109, which is applicable to the period in which the amount becomes due, as provided in (i)(6)(v) of this clause, and then at the rate applicable for each six-month period as fixed by the Secretary until the amount is paid.

(ii) The ordering activity may issue a demand for payment to the Contractor upon finding a debt is due under the contract.

(iii) Final decisions. The Contracting Officer will issue a final decision as required by 33.211 if —

(A) The Contracting Officer and the Contractor are unable to reach agreement on the existence or amount of a debt within 30 days;

(B) The Contractor fails to liquidate a debt previously demanded by the

Contracting Officer within the timeline specified in the demand for payment unless the amounts were not repaid because the Contractor has requested an installment payment agreement; or

(C) The Contractor requests a deferment of collection on a debt previously demanded by the Contracting Officer (see 32.607-2).

(iv) If a demand for payment was previously issued for the debt, the demand for payment included in the final decision shall identify the same due date as the original demand for payment.

(v) Amounts shall be due at the earliest of the following dates:

(A) The date fixed under this contract.

(B) The date of the first written demand for payment, including any demand for payment resulting from a default termination.

(vi) The interest charge shall be computed for the actual number of calendar days involved beginning on the due date and ending on —

(A) The date on which the designated office receives payment from the Contractor;

(B) The date of issuance of an ordering activity check to the Contractor from which an amount otherwise payable has been withheld as a credit against the contract debt; or

(C) The date on which an amount withheld and applied to the contract debt would otherwise have become payable to the Contractor.

(vii) The interest charge made under this clause may be reduced under the procedures prescribed in 32.608-2 of the Federal Acquisition Regulation in effect on the date of this contract.

(j) *Risk of loss*. Unless the contract specifically provides otherwise, risk of loss or damage to the supplies provided under this contract shall remain with the Contractor until, and shall pass to the ordering activity upon:

(1) Delivery of the supplies to a carrier, if transportation is f.o.b. origin; or

(2) Delivery of the supplies to the ordering activity at the destination specified in the contract, if transportation is f.o.b. destination.

(k) *Taxes (TAILORED)*. The contract price includes all applicable Federal, State, and local taxes and duties with the exception of gross receipts taxes expected to be in effect and applicable to this contract at the time of contract award.

(1) After-imposed Federal, State, or local tax, means any new or increased Federal, State, or local excise tax or duty, or tax that was exempted or excluded on the contract award date but whose exemption was later revoked or reduced, or whose computation was later changed

during the contract period, on the transactions or property covered by this contract that the Contractor is required to pay or bear as the result of legislative, judicial, or administrative action taking effect after the contract date. It does not include social security tax, income tax, or other employment taxes.

(i) The contract price shall be increased by the amount of any after-imposed Federal, State or local tax, provided the Contractor warrants, in writing, that no amount for such newly imposed Federal, State, or local excise tax or duty or rate increase was included in the contract price, as a contingency reserve or otherwise.

(2) After-relieved Federal, State, or local tax, means any amount of Federal, State, or local excise tax or duty that would otherwise have been payable on the transactions or property covered by this contract, but which the Contractor is not required to pay or bear, or for which the Contractor obtains a refund or drawback, as the result of legislative, judicial, or administrative action taking effect after the contract date. It does not include social security tax, income tax, or other employment taxes.

(i) The contract price shall be decreased by the amount of any after-relieved Federal, State, or local tax

(3) Any increases or decreases in the contract price shall be accomplished by a bilateral contract modification. In the event that the Government and the Contractor cannot agree to an acceptable contract adjustment, the Government will unilaterally adjust the contract price via modification subject to the Disputes provisions of FAR 52.212-4(d) incorporated in the contract.

(4) The ceiling price for tax-related costs is limited to 20% of the contract price.

(i) The Government will not be obligated to pay the Contractor any amount in excess of the ceiling price and the Contractor shall not be obligated to continue performance if to do so would exceed the ceiling price set forth in the Schedule, unless and until the Contracting Officer notifies the Contractor in writing that the ceiling price has been increased and specifies in the notice a revised ceiling that shall constitute the ceiling price for performance under this contract. When and to the extent that the ceiling price set forth has been increased, any costs incurred by the Contractor in excess of the ceiling price before the increase shall be allowable to the same extent as if the costs had been incurred after the increase in the ceiling price.

FAR 52.212-4 (I) ***Termination for the Government's Convenience (TAILORED)***

(1) At any time following contract execution, the Government may terminate this contract in its entirety or terminate natural gas supply to individual accounts specified herein.

(i) The Government will pay any reasonable penalties permitted by the applicable tariff provisions that are imposed by the LDC or other appropriate authority associated with such termination in the event the subject contract account(s) were properly enrolled as required pursuant to Section A herein.

(ii) Upon termination, the Contractor and the Government will have no further obligation to each other with respect to the terminated contract or terminated individual accounts except as described herein.

(2) If termination applies to a contract that is currently enrolled by the Contractor as the supplier of record with the LDC, then the Government must provide at least sixty (60) days prior notice of termination to the Contractor.

(i) Upon termination of an enrolled account(s), Contractor will return such account(s) to LDC service on the next available meter read date as determined by the LDC, and the party's respective obligations under this contract will cease on that meter read date.

(ii) At the time the enrolled account(s) is terminated the Contractor will make a reasonable assessment of the difference between the Contract Price (Price A) and the market based price for the same supply at the time the contract is terminated (Price B). The Contractor's assessment of Price B may include any incidental costs such as administrative costs, brokerage fees, transmission or increased tax costs for termination, provided such incidental costs are reasonable and documented for the Government.

(A) If Price A is greater than Price B the Government shall pay the Contractor the difference between Price A and Price B. If Price A is less than Price B, the Contractor shall credit the Government ninety (90%) percent of the difference between Price A and Price B. The credit to the Government shall be made in the form of checks from the Contractor made out to the LDC in care of the respective Government accounts on a pro rata share basis within 30 days of contract termination.

The Contractor shall itemize and support all costs using its standard record keeping system by appropriate proofs of costs or credits resulting from the termination. Exhibit 1 (published volumes) will be used to calculate any amount owed to the Contractor or credit owed to the Government. The Contractor shall not be required to comply with the cost accounting standards or contract cost principles for this purpose. The Contractor shall not be paid for any work performed or costs incurred which reasonably could have been avoided.

(m) *Termination for cause.* The Government may terminate this contract, or any part hereof, for cause in the event of any default by the Contractor, or if the Contractor fails to comply with any contract terms and conditions, or fails to provide the Government, upon request, with adequate assurances of future performance. In the event of termination for cause, the Government shall not be liable to the Contractor for any amount for supplies or services not accepted, and the Contractor shall be liable to the Government for any and all rights and remedies provided by law. If it is determined that the Government improperly terminated this contract for default, such termination shall be deemed a termination for convenience.

(n) ***Title (TAILORED)***. Title to the natural gas supplied by the Contractor under this contract shall pass to the Government upon delivery at the Delivery Point. The Contractor warrants that the natural gas delivered to the Government under this contract will be free and clear of any liens, claims and encumbrances arising prior to delivery at the Delivery Point.

(o) ***Warranty (TAILORED)***. The Contractor warrants and implies that the natural gas delivered hereunder conforms to the tariff of the transmitting and/or distributing utility at the Delivery Point.

(p) ***Limitation of Liability (TAILORED)***. Except as otherwise provided by an express warranty, Contractor shall not be liable to the Government for any consequential, special, incidental, punitive, exemplary or indirect damages or other business interruption damages, except to the extent caused by Contractor's (or that of its agent) gross negligence or willful misconduct.

(q) *Other compliances.* The Contractor shall comply with all applicable Federal, State and local laws, executive orders, rules and regulations applicable to its performance under this contract.

(r) *Compliance with laws unique to Government contracts.* The Contractor agrees to comply with 31 U.S.C. 1352 relating to limitations on the use of appropriated funds to influence certain Federal contracts; 18 U.S.C. 431 relating to officials not to benefit; 40 U.S.C. chapter 37, Contract Work Hours and Safety Standards; 41 U.S.C. chapter 87, Kickbacks; 41 U.S.C. 4712 and 10 U.S.C. 2409 relating to whistleblower protections; 49 U.S.C. 40118, Fly American; and 41 U.S.C. chapter 21 relating to procurement integrity.

(s) *Order of precedence.* Any inconsistencies in this solicitation or contract shall be resolved by giving precedence in the following order:

(1) The schedule of supplies/services.

(2) The Assignments, Disputes, Payments, Invoice, Other Compliances, Compliance with Laws Unique to Government Contracts, Unauthorized Obligations, and Commercial Supplier Agreements – Unenforceable Clauses paragraphs of this clause.

(3) The clause at 52.212-5.

(4) Addenda to this solicitation or contract, including any commercial supplier agreements as amended by the Commercial Supplier Agreements – Unenforceable Clauses provision.

(5) Solicitation provisions if this is a solicitation.

(6) Other paragraphs of this clause.

(7) The Standard Form 1449.

(8) Other documents, exhibits, and attachments.

(9) The specification.

(t) System for Award Management (SAM).

(1) Unless exempted by an addendum to this contract, the Contractor is responsible during performance and through final payment of any contract for the accuracy and completeness of the data within the SAM database, and for any liability resulting from the ordering activity's reliance on inaccurate or incomplete data. To remain registered in the SAM database after the initial registration, the Contractor is required to review and update on an annual basis from the date of initial registration or subsequent updates its information in the SAM database to ensure it is current, accurate and complete. Updating information in the SAM does not alter the terms and conditions of this contract and is not a substitute for a properly executed contractual document.

(2) (i) If a Contractor has legally changed its business name, "doing business as" name, or division name (whichever is shown on the contract), or has transferred the assets used in performing the contract, but has not completed the necessary requirements regarding novation and change-of-name agreements in FAR Subpart 42.12, the Contractor shall provide the responsible Contracting Officer a minimum of one business day's written notification of its intention to (A) change the name in the SAM database; (B) comply with the requirements of Subpart 42.12; and (C) agree in writing to the timeline

and procedures specified by the responsible Contracting Officer. The Contractor must provide with the notification sufficient documentation to support the legally changed name.

(ii) If the Contractor fails to comply with the requirements of paragraph (t)(2)(i) of this clause, or fails to perform the agreement at paragraph (t)(2)(i)(C) of this clause, and, in the absence of a properly executed novation or change-of-name agreement, the SAM information that shows the Contractor to be other than the Contractor indicated in the contract will be considered to be incorrect information within the meaning of the "Suspension of Payment" paragraph of the electronic funds transfer (EFT) clause of this contract.

(3) The Contractor shall not change the name or address for EFT payments or manual payments, as appropriate, in the SAM record to reflect an assignee for the purpose of assignment of claims (see Subpart 32.8, Assignment of Claims). Assignees shall be separately registered in the SAM database. Information provided to the Contractor's SAM record that indicates payments, including those made by EFT, to an ultimate recipient other than that Contractor will be considered to be incorrect information within the meaning of the "Suspension of payment" paragraph of the EFT clause of this contract.

(4) Offerors and Contractors may obtain information on registration and annual confirmation requirements via SAM accessed through <https://www.acquisition.gov>.

(u) Unauthorized Obligations.

(1) Except as stated in paragraph (u)(2) of this clause, when any supply or service acquired under this contract is subject to any commercial supplier agreement (as defined in 502.101) that includes any language, provision, or clause requiring the ordering activity to pay any future fees, penalties, interest, legal costs or to indemnify the Contractor or any person or entity for damages, costs, fees, or any other loss or liability that would create an Anti-Deficiency Act violation (31 U.S.C. 1341), the following shall govern:

(i) Any such language, provision, or clause is unenforceable against the ordering activity.

(ii) Neither the ordering activity nor any ordering activity authorized end user shall be deemed to have agreed to such clause by virtue of it appearing in the commercial supplier agreement. If the commercial supplier agreement is invoked through an "I agree" click box or other comparable mechanism (e.g., "click-wrap" or "browse-wrap" agreements), execution does not bind the ordering activity or any ordering activity authorized end user to such clause.

(iii) Any such language, provision, or clause is deemed to be stricken from the commercial supplier agreement.

(2) Paragraph (u)(1) of this clause does not apply to indemnification or any other payment by the ordering activity that is expressly authorized by statute and specifically authorized under applicable agency regulations and procedures.

(v) Incorporation by reference. The Contractor's representations and certifications, including those completed electronically via the System for Award Management (SAM), are incorporated by reference into the contract.

(w) Commercial supplier agreements – unenforceable clauses. When any supply or service acquired under this contract is subject to a commercial supplier agreement (as defined in 502.101), the following

language shall be deemed incorporated into the commercial supplier agreement. As used herein, "this agreement" means the commercial supplier agreement:

(1) Notwithstanding any other provision of this agreement, when the end user is an agency or instrumentality of the ordering activity, the following shall apply:

(i) *Applicability*. This agreement is a part of a contract between the commercial supplier and the ordering activity for the acquisition of the supply or service that necessitates a license (including all contracts, task orders, and delivery orders under FAR Part 12).

(ii) *End user*. This agreement shall bind the ordering activity as end user but shall not operate to bind an ordering activity employee or person acting on behalf of the ordering activity in his or her personal capacity.

(iii) *Law and disputes*. This agreement is governed by Federal law.

(A) Any language purporting to subject the ordering activity to the laws of a U.S. state, U.S. territory, district, or municipality, or a foreign nation, except where Federal law expressly provides for the application of such laws, is hereby deleted.

(B) Any language requiring dispute resolution in a specific forum or venue that is different from that prescribed by applicable Federal law is hereby deleted.

(C) Any language prescribing a different time period for bringing an action than that prescribed by applicable Federal law in relation to a dispute is hereby deleted.

(iv) *Continued performance*. The supplier or licensor shall not unilaterally revoke, terminate or suspend any rights granted to the ordering activity except as allowed by this contract. If the supplier or licensor believes the ordering activity to be in breach of the agreement, it shall pursue its rights under the Contract Disputes Act or other applicable Federal statute while continuing performance as set forth in subparagraph (d) (Disputes).

(v) *Arbitration; equitable or injunctive relief*. In the event of a claim or dispute arising under or relating to this agreement, a binding arbitration shall not be used unless specifically authorized by agency guidance, and equitable or injunctive relief, including the award of attorney fees, costs or interest, may be awarded against the ordering activity only when explicitly provided by statute (e.g., Prompt Payment Act or Equal Access to Justice Act).

(vi) *Updating terms*.

(A) After award, the contractor may unilaterally revise commercial supplier agreement terms if they are not material. A material change is defined as:

(1) Terms that change the ordering activity's rights or obligations;

(2) Terms that increase ordering activity prices;

(3) Terms that decrease overall level of service; or

(4) Terms that limit any other ordering activity right addressed elsewhere in this contract.

(B) For revisions that will materially change the terms of the contract, the revised commercial supplier agreement must be incorporated into the contract using a bilateral modification.

(C) Any agreement terms or conditions unilaterally revised subsequent to award that are inconsistent with any material term or provision of this contract shall not be enforceable against the ordering activity, and the ordering activity shall not be deemed to have consented to them.

(vii) *No automatic renewals.* If any license or service tied to periodic payment is provided under this agreement (e.g., annual software maintenance or annual lease term), such license or service shall not renew automatically upon expiration of its current term without prior express consent by an authorized ordering activity representative.

(viii) *Indemnification.* Any clause of this agreement requiring the commercial supplier or licensor to defend or indemnify the end user is hereby amended to provide that the U.S. Department of Justice has the sole right to represent the United States in any such action, in accordance with 28 U.S.C. 516.

(ix) *Audits.* Any clause of this agreement permitting the commercial supplier or licensor to audit the end user's compliance with this agreement is hereby amended as follows:

(A) Discrepancies found in an audit may result in a charge by the commercial supplier or licensor to the ordering activity. Any resulting invoice must comply with the proper invoicing requirements specified in the underlying ordering activity contract or order.

(B) This charge, if disputed by the ordering activity, will be resolved in accordance with subparagraph (d) (Disputes); no payment obligation shall arise on the part of the ordering activity until the conclusion of the dispute process.

(C) Any audit requested by the contractor will be performed at the contractor's expense, without reimbursement by the ordering activity.

(x) *Taxes or surcharges.* Any taxes or surcharges which the commercial supplier or licensor seeks to pass along to the Government as end user will be governed by the terms of the underlying contract or order and, in any event, must be submitted to the Contracting Officer for a determination of applicability prior to invoicing unless specifically agreed to otherwise in the Government's contract.

(End of clause)

FAR 52.204-24, Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment (DEC 2019)

The Offeror shall not complete the representation in this provision if the Offeror has represented that it "does not provide covered telecommunications equipment or services as a part of its offered products or services to the Government in the performance of any contract, subcontract, or other contractual

instrument” in the provision at [52.204-26](#), Covered Telecommunications Equipment or Services-Representation, or in paragraph (v) of the provision at [52.212-3](#), Offeror Representations and Certifications-Commercial Items.

(a) *Definitions.* As used in this provision—

“Covered telecommunications equipment or services”, “critical technology”, and “substantial or essential component” have the meanings provided in clause [52.204-25](#), Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment.

(b) *Prohibition.* Section 889(a)(1)(A) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits the head of an executive agency on or after August 13, 2019, from procuring or obtaining, or extending or renewing a contract to procure or obtain, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. Contractors are not prohibited from providing—

(1) A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or

(2) Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(c) *Procedures.* The Offeror shall review the list of excluded parties in the System for Award Management (SAM) (<https://www.sam.gov>) for entities excluded from receiving federal awards for “covered telecommunications equipment or services”.

(d) *Representation.* The Offeror represents that it ☐ will, ☐ will not provide covered telecommunications equipment or services to the Government in the performance of any contract, subcontract or other contractual instrument resulting from this solicitation.

(e) *Disclosures.* If the Offeror has represented in paragraph (d) of this provision that it “will” provide covered telecommunications equipment or services”, the Offeror shall provide the following information as part of the offer—

(1) A description of all covered telecommunications equipment and services offered (include brand; model number, such as original equipment manufacturer (OEM) number, manufacturer part number, or wholesaler number; and item description, as applicable);

(2) Explanation of the proposed use of covered telecommunications equipment and services and any factors relevant to determining if such use would be permissible under the prohibition in paragraph (b) of this provision;

(3) For services, the entity providing the covered telecommunications services (include entity name, unique entity identifier, and Commercial and Government Entity (CAGE) code, if known); and

(4) For equipment, the entity that produced the covered telecommunications equipment (include entity name, unique entity identifier, CAGE code, and whether the entity was the OEM or a distributor, if known).

(End of provision)

GSAR 552.204-70, Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment. (AUG 2019)

(a) *Definitions.* As used in this clause-

“Covered telecommunications equipment or services”, “Critical technology”, and “Substantial or essential component” have the meanings provided in FAR 52.204-25, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment.

(b) *Prohibition.* Section 889(a)(1)(A) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits the head of an executive agency on or after August 13, 2019, from procuring or obtaining, or extending or renewing a contract to procure or obtain, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. Contractors are not prohibited from providing-

(1) A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or

(2) Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(c) *Representation.* [Contractor to complete and submit to the Contracting Officer] The Offeror or Contractor represents that it [] will or [] will not provide covered telecommunications equipment or services to the Government in the performance of any contract, subcontract, order, or other contractual instrument resulting from this contract. This representation shall be provided as part of the proposal and resubmitted on an annual basis from the date of award.

(d) *Disclosures.* If the Offeror or Contractor has responded affirmatively to the representation in paragraph (c) of this clause, the Offeror or Contractor shall provide the following additional information to the Contracting Officer--

(1) All covered telecommunications equipment and services offered or provided (include brand; model number, such as original equipment manufacturer (OEM) number, manufacturer part number, or wholesaler number; and item description, as applicable);

(2) Explanation of the proposed use of covered telecommunications equipment and services and any factors relevant to determining if such use would be permissible under the prohibition in paragraph (b) of this provision;

(3) For services, the entity providing the covered telecommunications services (include entity name, unique entity identifier, and Commercial and Government Entity (CAGE) code, if

known); and

(4) For equipment, the entity that produced the covered telecommunications equipment (include entity name, unique entity identifier, CAGE code, and whether the entity was the OEM or a distributor, if known).

(End of clause)

FAR 52.204-25 Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment

[Reference FAR 4.2105(b)]

PROHIBITION ON CONTRACTING FOR CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE
SERVICES OR EQUIPMENT (AUG 2019)

(a) *Definitions.* As used in this clause—

“Covered foreign country” means The People’s Republic of China.

“Covered telecommunications equipment or services” means—

- (1) Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities);
- (2) For the purpose of public safety, security of Government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities);
- (3) Telecommunications or video surveillance services provided by such entities or using such equipment; or
- (4) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

“Critical technology” means—

- (1) Defense articles or defense services included on the United States Munitions List set forth in the International Traffic in Arms Regulations under subchapter M of chapter I of title 22, Code of Federal Regulations;
- (2) Items included on the Commerce Control List set forth in Supplement No. 1 to part 774 of the Export Administration Regulations under subchapter C of chapter VII of title 15, Code of Federal Regulations, and controlled-

- (i) Pursuant to multilateral regimes, including for reasons relating to national security, chemical and biological weapons proliferation, nuclear nonproliferation, or missile technology; or
 - (ii) For reasons relating to regional stability or surreptitious listening;
- (3) Specially designed and prepared nuclear equipment, parts and components, materials, software, and technology covered by part 810 of title 10, Code of Federal Regulations (relating to assistance to foreign atomic energy activities);
- (4) Nuclear facilities, equipment, and material covered by part 110 of title 10, Code of Federal Regulations (relating to export and import of nuclear equipment and material);
- (5) Select agents and toxins covered by part 331 of title 7, Code of Federal Regulations, part 121 of title 9 of such Code, or part 73 of title 42 of such Code; or
- (6) Emerging and foundational technologies controlled pursuant to section 1758 of the Export Control Reform Act of 2018 (50 U.S.C. 4817).

“Substantial or essential component” means any component necessary for the proper function or performance of a piece of equipment, system, or service.

(b) *Prohibition.* Section 889(a)(1)(A) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits the head of an executive agency on or after August 13, 2019, from procuring or obtaining, or extending or renewing a contract to procure or obtain, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. The Contractor is prohibited from providing to the Government any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, unless an exception at paragraph (c) of this clause applies or the covered telecommunication equipment or services are covered by a waiver described in Federal Acquisition Regulation [4.2104](#).

(c) *Exceptions.* This clause does not prohibit contractors from providing—

- (1) A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or
- (2) Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(d) Reporting requirement.

- (1) In the event the Contractor identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or the Contractor is notified of such by a subcontractor at any tier or by any other source, the Contractor shall report the information in paragraph (d)(2) of this clause to the Contracting Officer, unless elsewhere in this contract are established procedures for reporting the information; in the case of the Department of Defense, the Contractor shall report to the website at <https://dibnet.dod.mil>. For indefinite delivery contracts, the Contractor shall

report to the Contracting Officer for the indefinite delivery contract and the Contracting Officer(s) for any affected order or, in the case of the Department of Defense, identify both the indefinite delivery contract and any affected orders in the report provided at <https://dibnet.dod.mil>.

- (2) The Contractor shall report the following information pursuant to paragraph (d)(1) of this clause
 - (i) Within one business day from the date of such identification or notification: the contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.
 - (ii) Within 10 business days of submitting the information in paragraph (d)(2)(i) of this clause: any further available information about mitigation actions undertaken or recommended. In addition, the Contractor shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.
- (e) *Subcontracts*. The Contractor shall insert the substance of this clause, including this paragraph (e), in all subcontracts and other contractual instruments, including subcontracts for the acquisition of commercial items.

(End of clause)

52.204-26 Covered Telecommunications Equipment or Services-Representation.

Covered Telecommunications Equipment or Services-Representation (Dec 2019)

(a) *Definitions*. As used in this provision, “covered telecommunications equipment or services” has the meaning provided in the clause **52.204-25**, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment.

(b) *Procedures*. The Offeror shall review the list of excluded parties in the System for Award Management (SAM) (<https://www.sam.gov>) for entities excluded from receiving federal awards for “covered telecommunications equipment or services”.

ATTACHMENT 3: PRICE COMPONENT CONFIRMATION TABLE

Price Component Confirm Table		
Price Component	Fixed or Pass Through Cost	Include in Bid Price?
Energy Commodity Costs	Fixed	Yes
Capacity Including Upstream Capacity	Fixed	Yes
Ancillary and Incidental Services	Fixed	Yes
Balancing and Scheduling Services	Fixed	Yes
EnelX Fee	Fixed	Yes
Imbalance Penalties	Fixed	Yes
Line Losses & Fuel Factor (LDC, interstate and intrastate)	Fixed	Yes
Nominations	Fixed	Yes
Pooling Costs and Fees	Fixed	Yes
Storage Costs and Fees	Fixed	Yes
Applicable taxes	Pass Through At Cost	No